

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL WRIT PETITION NO.2811/1993
(Mool Singh & Ors. Vs. State of Raj. & Anr.)

Date of Judgment : 02.08.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Harish Purohit, for the petitioners.
Mr. Shyam Ladreacha, Dy. Govt. Advocate for State.

This joint writ petition has been filed on behalf of the petitioners due to their common cause of action against the order for recovery of Rs.12,500/- passed by the respondent No.2 which is one of the penalty as enumerated in Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 for which regular inquiry is necessary but without holding any inquiry impugned order has been passed.

According to the facts of the case in the intervening night of 9th and 10 of March, 1986, a theft took place at Police Line, Jodhpur wherein from the Entertainment House (Manoranjan Grah), One VCR (National Penasonic) and four video cassettes were stolen. A case bearing No.76/86 under Section 457 and

380 I.P.C. was registered at Police Station Udai Mandair, Jodhpur. After investigation, police has submitted final report and the same was accepted by the competent court.

As per the facts of the case, the day on which the incident took place, the petitioner No.1 - Mool Singh was holding the post of R.I. Police Line, Jodhpur, petitioner No.2 - Laxman Singh was holding the post of RSI, petitioner No.3 Rewat Singh was discharging the duties of Head Constable and he was posted at Manoranjan Grah, petitioner No.4 Ghewar Singh and petitioner No.5 were also posted as Head Constable and FC in the Police Line, Jodhpur.

With regard to incident of theft took place in the Police Line, the Superintendent of Police, Jodhpur decided to hold an enquiry in the matter to establish personal liability of the loss caused due to theft of VCR. The said VCR which was stolen from Manoranjan Grah was gifted by some private party to the Department, as such it was not a property of the State Government or Police Department.

Upon enquiry, the Addl. Superintendent of Police, Jodhpur gave its report on 22.8.1988 (Annexure-1) to the Superintendent of Police, Jodhpur in which he reached to the conclusion that no Police Officer or employee could be held responsible for the

loss caused to the department. It was also mentioned in the report that no Police Officer or employee was negligent for the loss caused to the department. The enquiry officer also assessed the loss caused to the department as Rs.10,500/-.

Another order was passed on 14.10.1988 whereby Addl. Superintendent of Police was directed to conduct a fresh enquiry under Rule 23 of the General Finance & Account Rules for fixing personal liability of the Police officer for the loss caused to the department because of the theft of VCR. In the said fact finding enquiry, it was reported that there was negligence on the part of the petitioners. Thereafter, an order dated 21.8.1990 (Annexure-3) was passed by Superintendent of Police, Jodhpur for recovery of the amount from the petitioners. Against the said order, a representation was filed by the petitioners that while passing the aforesaid order, no opportunity of hearing has been given nor any charge-sheet has been given under Rule 17 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, therefore, without providing any opportunity of hearing and opportunity to defend themselves, the said second enquiry has been conducted and order for recovery has been passed in contravention of disciplinary rules. Upon the said representation, the Superintendent of Police cancelled the order of recovery and passed an order for holding departmental

enquiry vide order dated 20.11.1990. However, after passing the order dated 20.11.1990, the departmental enquiry was required to be conducted but again the Addl. Superintendent of Police was directed to hold the enquiry in accordance with Rule 23 of GF & A Rules and the Additional Superintendent of Police gave its finding that he has already filed the report earlier and the same may be taken on record and thus, there is no requirement to hold another enquiry. The said communication dated 17.1.1991 has been placed on record as Annexure-5. However, on 19.1.1991, an order for recovery of amount from Mool Singh, Laxman Singh and Ghewar Singh was passed, that too, without holding enquiry under CCA Rules. The petitioners preferred a representation before the Superintendent of Police, Jodhpur. Upon the said representation, the Superintendent of Police has passed an order for recovery of amount of Rs.12,500/- from all the petitioners. The petitioners are challenging the said order on the ground that recovery of any financial loss is a penalty enumerated under Rule 14 of the CCA Rules for minor penalty, therefore, for recovery from pay of any pecuniary loss caused to the Department by negligence or breach of any law, rule or order, an order is required to be passed after holding enquiry under Rule 17 of the CCA Rules. It is also prayed that according to Rule 14 of the CCA Rules, the recovery from pay for any pecuniary loss caused to the Government is a punishment, which cannot be imposed

upon a civil servant without following the procedure under the Rule 17 of CCA Rules, 1958. The respondents have conducted preliminary inquiry under General Finance & Account Rules, that cannot be treated as an enquiry provided under CCA Rules for passing order for recovery of pecuniary loss, therefore, the order passed by Superintendent of Police is totally illegal.

Learned counsel for the petitioner has prayed that without providing any opportunity of hearing and taking action under CCA Rules and conducting departmental enquiry, no recovery can be made in the form of pecuniary loss caused to the Government because it is minor penalty enumerated under Rule 14 of CCA Rules.

In reply to the writ petition, it is submitted that liability was rightly fixed under General Finance & Account Rules. There is no breach of law, rule and order as there was financial loss, therefore, the enquiry was rightly proceeded under the General Finance & Account Rule. Rule 14 of the CCA Rules covers the pecuniary loss caused to the Department by negligence or breach of any law, rule or order. In the instant case, as per the respondents, financial loss occurred due to negligence discharge of duties and thus provisions of CCA Rules with regard to disciplinary action are not attracted. Therefore, the impugned order does not require any interference by

this Court. In this case, the Addl. Superintendent of Police has rightly conducted the enquiry and while holding negligence on the part of the petitioners, report was submitted in which they were held responsible for negligence discharge of duties.

I have considered the pleadings of the case as well as the arguments advanced by both the parties.

It is very strange that in reply it is specifically mentioned that the said order of recovery was passed on the basis of enquiry held under General Financial & Account Rules in which the petitioners were found to be negligent with regard to discharge in their duties, therefore, the financial loss occurred. This finding is stigmatic for which action can be taken under CCA Rules. Thus, in my opinion, this finding itself requires regular enquiry because this is one of the misconduct against the government employee, so also, for financial loss by way of holding an enquiry under Rule 17 of CCA Rules any order for recovery can be made but in this case no action whatsoever has been taken under the CCA Rules and straight-away on the basis of the enquiry conducted under 23 of General Finance & Account Rules by Addl. Superintendent of Police, the order for recovery for amount has been ordered while holding the petitioners negligent towards their duties which is totally unwarranted because at least for establishing

any negligence against a government employee, he is required to be given opportunity of hearing and he is required to be given opportunity to lead evidence and for the said purpose, the only course is to take action under CCA Rules. The Superintendent of Police, Jodhpur has passed an order for recovery of amount related to the financial loss suffered by the Government, which is one of the penalty enumerated under Rule 14 of the CCA Rules. Therefore, obviously, the order impugned passed by Superintendent of Police, Jodhpur deserves to be quashed because it is not in consonance with the provisions of law. Accordingly, the writ petition is allowed and the impugned order dated 24.7.1993 is set aside. It is made clear that if department wants to take actions against the petitioners for taking disciplinary action with regard to financial loss and negligence, then they are at liberty to do so in accordance with CCA Rules, 1958.

(GOPAL KRISHAN VYAS), J.

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